IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5026 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SALIMKHAN HAJIGULAMRASUL

Versus

DY COMMR ENTERTAINMENT TAX DEPTT

Appearance:

1. Special Civil Application No. 5026 of 1989
NOTICE SERVED for Petitioner No. 1
MR SIRAJ GORI, AGP. for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 16/06/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

When the matter is called out for final hearing none appears for the petitioner. The petitioner himself is also not present. Mr.Siraj Gori appears for the respondents. The petition was originally filed through Advocate Mr. S.D.Patel. On the death of Mr. S.D.Patel the office issued notice to the original petitioner. Inspite of service of notice the petitioner has not appeared either in person or through any Advocate. In the circumstances, the petition deserves to be dismissed for default. Interim stay granted earlier is required to be vacated.

2. While vacating the stay we would like to note that against the Entertainment Tax assessed at Rs.5603.04 and penalty of Rs.8404.56 the petitioner has deposited Rs.5,000/- on 9/9/1989 as stated by Mr.Gori, learned AGP on the basis of letter dated 21/12/1993 of Collector, Vadodara. This deposit was obviously in compliance with the condition stipulated in the ad-interim order dated 14/8/1989 granting ad-interim stay against recovery on the condition that the petitioner deposited a sum of Rs.5,000/- with respondent No.1. Ad-interim relief was thereafter confirmed on 16/10/1999.

Moreover, when the petitioner had challenged the impugned order of the Deputy Commissioner, Surat before the Commissioner of Entertainment Tax, Gujarat State, Gandhinagar in revision, the Revisional Authority had granted stay against coercive recovery subject to the condition that the petitioner was to deposit Rs.2800/-. In paragraph 3 of the petition the petitioner has averred on oath that the Revisional Authority had ordered the petitioner to pay 20% of the amount as directed in Annexure 'A' and the petitioner deposited the said amount on 4/4/1988. The respondents have not filed any affidavit-in-reply and the aforesaid assertion made by the petitioner on oath has remained uncontroverted.

In view of the above, while vacating the interim stay confirmed on 16/10/1999, we grant the petitioner time upto 31/7/2004 to pay the balance amount payable under order dated 20/1/1988 at Annexure 'A' to the petition as the amount of Rs.5,000/- was deposited on 9/9/1989 and also the amount of Rs.2800/- is stated to have been deposited by the petitioner on 4/4/1988.

3 Subject to the aforesaid observations, the petition is dismissed for default of appearance and Interim relief stands vacated.

Rule is discharged with no order as to costs.

(M.S.Shah, J)

(D.A.Mehta, J)

m.m.bhatt